

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.1898 of 2010

ORDER:

This criminal petition is filed under Section 482 of Cr.PC to quash the proceedings against the petitioner/A9 in C.C. No.7 of 2006 on the file of the court of Special Judge for Economic Offences, Andhra Pradesh, Hyderabad.

2. The learned counsel for the petitioner submitted that A2, A3 and A4 in C.C. No.7 of 2006 filed CrI.P.No.2625 of 2007 before this court seeking quashing of the proceedings against them for the offence under Section 63 of the Companies Act. This Court by common order dated 04.12.2009 in CrI.P.Nos.2625, 2626 and 2630 of 2007 quashed the proceedings against A2, A3 and A4 in C.C. No.7 of 2006 with the following observations:

It is further contended by the 1st respondent's counsel that scope of Section 482 of the Code of Criminal Procedure is very much limited and that no interference may be made in these matters, having regard to decision of the Supreme Court

in **State of Haryana Vs. Bhajanlal and others**^[1]. While dealing with scope of a petition under Section 482 of the Code of Criminal Procedure, the Supreme Court laid down certain guidelines which are as follows:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

This Court has to see whether allegations made in the complaint *prima facie* make out offences under Sections 63, 68 and 268 of the Companies Act. Further it has to be seen whether any or the complaints are barred by limitation in view of Section 468 of the Code of Criminal Procedure.

The offence under Section 68 of the Companies Act is punishable with imprisonment which may extend to five years. Therefore, complaint in C.C.No.8 of 2006 is not barred by limitation because there is no time limit fixed for prosecuting any person for the offence under Section 68 of the Companies Act. In so far as offences under Sections 63 and 628 of the Companies Act are concerned, they are punishable with imprisonment which may extend to two years; and so as per Section 468(2)(c) of the Code of Criminal Procedure, period of limitation for filing complaint for the said offences is only three years. As per Section 469 of the Code of Criminal Procedure, period of limitation commences on the date of offence or where commission of the offences was not known to the person aggrieved by the offences the first date on which such offence comes to knowledge of such person, which ever is earlier. In the cases on hand, the prospectus was published on 14.06.1990 and letter of offer was given on dated 16.05.1992. If any false statement or mis-statement occurred in the prospects or the letter of offer, then the 1st respondent should have filed complaints in the lower court within three years thereof. Now the first respondent wants to take shelter under Section 469(1)(b) of the Code of Criminal Procedure and also letter dated 12.07.2002 of the Regional Director, Southern Region, Chennai. Until the letter dated 12.07.2002 of the Regional Director, the 1st respondent viz., Registrar of Companies, Hyderabad was sleeping over the matter and it is only after the Regional Director poked, the Registrar of Companies, Hyderabad woke up and filed the complaints in the lower court in August, 2003. Therefore, the 1st respondent wants this Court to recon starting of period of limitation from 12.07.2002. In my considered opinion, the 1st respondent cannot take benefit under Section 169(2)(b) of the Code of Criminal Procedure. Under the Companies Act, every

company is bound to submit its balance Sheet along with Directors' Report every year to the Registrar of Companies. It is not the 1st respondent's case that A-10 company and its Directors did not send such balance Sheet along with Directors' report to the Registrar every year. On the other hand, even as per allegations in the complaint contained in para Nos.9 and 10, there is no dispute that in the years 1992 and 1994, A-10 company sent its balance sheets on 30.09.1992 and 31.12.1994 respectively. The 1st respondent should have acted upon those balance sheets and Directors' reports and should have filed the complaints within the period of limitation. Therefore, in my opinion, in-action on the part of Registrar of Companies, Hyderabad in this case debars him from filing the complaints under Sections 63 and 628 of the Companies Act. I find that C.C.Nos.7 of 2006 and 9 of 2006 of the lower court are barred by limitation. The 1st respondent's counsel did not claim any exemption for the Registrar of Companies from applicability of the period of limitation prescribed under Section 468 of the Code of Criminal Procedure.

Section 63(1) of the Companies Act makes any un-true statements in a prospectus liable for punishment. Section 68 of the Companies Act forbids any statement, promises or forecast which is false deceptive or misleading made knowingly or recklessly, or by any dishonest concealment of material facts and inducement of any other person to enter into, or to offer to enter into any agreement of subscribing for, or underwriting any shares. Section 628 of the Companies Act forbids any prospectus or other documents mentioned therein making statement which is false, in any material particular knowing it to be false. The 1st respondent accuses the accused in these cases on the ground that the prospectus and letter of offer contained misstatements, false statements, false promises inducing the subscribers to invest in shares which were offered by the Company. The 1st respondent lists out in the complaints the alleged misstatements and promises in the prospectus and in the letter of offer. There is no dispute that Pfimex Group was an ongoing concern prior to going for public issue and it was being run in partnership firm. The prospectus contained only figures and achievements which were secured by Pfimex Group prior to being converted into a company. Letter of offer given in the year 1992 also contained performance results of the company after it is incorporated. It is not the complainant's case that any of those past history and performance results set out by the company either in the prospectus or in the letter of offer were false or misleading. The only allegation against the company is that the company had given a rosy picture in the prospectus and in the letter of offer attracting the public and shareholders to subscribe for shares and debentures in the company, by mentioning expected future results. One has to be optimistic in life and

cannot be expected to be pessimistic. No one can expect future gloomy picture in prospectus or letter of offer. At the same time, the subscribers will decide on subscribing for shares and debentures having regard to market instabilities and other risks involving in the subscription. Simply because the company expected to give more dividend and expected to earn more profit which the company could not achieve in future years, it cannot be said that contents of the prospectus and letter of offer were with full of false promises and false inducements. A-10 company or its Directors did not promise any definite achievement in future. They only projected possible achievements in the prospectus and the letter of offer. In those circumstances, in my opinion, basic requirements of Sections 63, 68 and 628 of the Companies Act are not made out by the 1st respondent/complainant in all these cases. When there is no prima facie case made out by the 1st respondent/complainant and when two of three cases are barred by limitation, this Court will certainly quash proceedings in all the three cases pending in the lower court.

3. The allegations made against the petitioner herein/A9 and the petitioners/A2 to A4 in CrI.P.No.2625 of 2007 are one and the same.

4. Having regard to the facts and circumstances of the case and also the order of this court in CrI.P.No.2625 of 2007, I am of the considered view that it is a fit case to quash the proceedings against the petitioner/A9 in C.C.No.7 of 2006.

5. In the result, the criminal petition is allowed quashing the proceedings against the petitioner/A9 in C.C. No.7 of 2006 on the file of the court of Special Judge for Economic Offences, Andhra Pradesh, Hyderabad. Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

T.SUNIL CHOWDARY, J.

March 15, 2016.

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^[1] 1992 Supp (1) Supreme Court Cases 335